IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3374 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REKHA KIRIT MAHIDA

Versus

CHAIRMAN

Appearance:

1. Special Civil Application No. 3374 of 2003

MR GIRISH M DAS for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR HM BHAGAT for Respondent No. 2-3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 06/08/2003

ORAL JUDGEMENT

This is a petition filed under the provisions of

Art. 226 of the Constitution of India praying that respondent No. 2 be directed to pay a sum of Rs. 10,44,386/- being an amount of 'Notional Cash Option' to the petitioner in pursuance of an insurance policy, a copy of which is at Annexure 'A' to the petition.

2. The facts giving rise to this petition are as under :

2.1 The daughter of the petitioner, Kum. Varshaben Kiritbhai Mahida, was insured by respondents Nos. 1 and 2 under Policy plan No. 122-30 known as Jeevan Suraksha. Varshaben K. Mahida, who has been described as the insured or 'annuitant' was unmarried and unfortunately she passed away on 20.1.2002 without getting married.

2.2 Looking to the provisions of the policy, the annuitant had to pay half-yearly installments of Rs. 3394/- each for 30 years. The policy commenced with effect from 28.3.1998, i.e. the date of proposal. At the end of 30 years, the annuitant was to get an option of either getting Rs. 10,44,386/- as cash option or monthly installment of Rs. 10,000/- by way of annuity for life. Even after her death, had she been married, her spouse would have got 50% of the amount, which would have been paid by way of annuity to the annuitant. According to clause 3(ii), if the annuitant was not having her spouse alive at the time of her death, the nominee appointed by her would become entitled to 'proportional Notional Cash Option in lumpsum.'

2.3 In the instant case, the annuitant was unmarried at the time of her death and she had appointed her mother Smt. Rekhaben Kiritbhai Mahida, as the nominee, who is the petitioner.

2.4 Upon death of the annuitant, the respondent Insurance Corporation calculated the amount payable to the nominee at Rs. 1,39,251.46. The said amount had been offered to the annuitant's nominee, i.e., the petitoner, but the petitioner has refused to accept the said amount because, according to her, the amount, which would have been payable to the annuitant, should be paid to her.

2.5 As the petitioner has been denied the amount of notional cash option, which would have been paid to the spouse of the annuitant, had the annuitant been married, the petitioner has approached this court with a prayer that a sum of Rs. 10,44,386/-, being notional cash option be directed to be paid to her by the respondent

corporation.

3. So as to substantiate the claim, learned advocate Shri G.M. Das appearing for the petitoner has relied upon sec. 45 of the Insurance Act, 1938 (hereinafter referred to as "the Act"). It has been submitted by him that according to the provisions of sec. 45 of the Act, no change in the policy could have been effected by the respondent insurance corporation and, therefore, after two years of the commencement of the policy, the respondent corporation cannot dispute the policy.

4. The learned advocate has further submitted that, according to him, the petitoner should get a sum of Rs. 10,44,386/- as notional cash option and not Rs. 1,39,251.46, the amount offered to the petitioner. According to him, the petitioner, being a nominee of the annuitant, should get the amount which would have been given to the spouse of the annuitant.

5. Thereafter, the learned advocate has submitted that according to Clause 3(i)(a) of the policy, the petitioner should be treated as "spouse" of the annuitant. It has been submitted by the learned advocate that name of the petitioner has been incorporated in the column, where name of the spouse was required to be stated. He has submitted that though the petitioner has been referred to as the mother of the annuitant, as her name has been stated in the column where name of the spouse should have been written, the petitioner should get all benefits, which the spouse of the annuitant would have got, if the annuitant had been married at the time of her death. According to the learned advocate, as the annuitant was unmarried, she was not having any spouse at the time of her death and, therefore, the petitioner must get the amount, which would have been paid to the spouse of the annuitant.

6. The learned advocate has thereafter submitted that even on the principle of promissory estoppel the petitoner should be given a sum of Rs. 10,44,386/because at the time when the annuitant had taken the policy, a representation was made to the effect that upon death of the annuitant, the petitioner, as her nominee, would get whatever benefit that would have been given to the spouse of the annuitant. It has been, therefore, submitted by him that on such a representation made by the agent, the policy was taken by the annuitant and, therefore, the petitioner should be paid a sum of Rs. 10,44,386/-.

7. Lastly, the learned advocate for the petitioner

has relied upon the judgment delivered in the case of LIC and others v. Asha Goel and others, (2001) 2 SCC 160. According to him, a writ petition is maintainable against Life Insurance Corporation, who is the respondent herein and, therefore the petition should not be rejected on the ground that it is not maintainable.

8. No other submission has been made by the learned advocate appearing for the petitioner.

9. On the other hand, learned advocate Shri H.M. Bhagat appearing for the respondents has relied upon the terms and conditions incorporated in the policy, which had been taken by the annuitant. He has drawn my attention to the said provisions incorporated in the policy.

10 It has been submitted by the learned advocate that at the time when the annuitant had taken the policy, she was unmarried. Even at the time when she expired, she was unmarried and therefore she was not having any spouse at the time of her death. It has been submitted by him that if the named spouse had been alive at the time when the annuitant had expired, the provisions of clause 3(i)(a) would have applied. In the instant case, though the annuitant died before the date on which the annuity was to vest, as the annuitant was not having any spouse, there was no question of making payment of the full notional cash option as prayed for by the petitioner. He has further submitted that according to clause 3(ii) of the said policy, if the named spouse is not alive on the date of death of the annuitant, proportional notional cash option in lumpsum (in the ratio of premiums paid upto the date of death to the total number of premiums payable) would become payable to the nominee. In the instant case, the petitioner was appointed as a nominee and as the spouse of the petitioner is not alive, as a nominee of the annuitant, the petitioner would be entitled to the proportional notional cash option in lumpsum. The said amount is to be paid in the ratio of the premiums paid upto the date of death to the total number of premium payable. According to him, the said amount is Rs. 1,39,251.46 as calculated in para 3 of the affidavit-in-reply. He has further added that though the said amount was offerred to the petitioner, the petitioner was not prepared to accept the same.

11. So far as sec. 45 of the Insurance Act is concerned, the learned advocate has submitted that the said section is not at all relevant in the instant case.

12. It has been submitted by the learned advocate appearing for the respondents that there is no averment with regard to misrepresentation by the agent in the memo of petition and the petitioner has not given any detail as to how a misrepresentation was made before her or before her daughter by the concerned insurance agent. In the circumstances, according to him, oral submissions made by the learned advocate for the petitioner regarding fraud or any misrepresentation having been made either to the petitioner or to the annuitant cannot be looked into at all.

13. The learned advocate has lastly submitted that though the name of the nominee has been stated in the column, where name of the spouse should have been written, in the policy it has been clarified that the petitioner was mother of the annuitant. It has been submitted by him that the annuitant was unmarried at the time when she was insured as well as at the time she expired. As she was not having any spouse, the annuitant had appointed her mother as her nominee and whatever amount becomes payable to the nominee by the insurance corporation has been offered to the nominee, that is, the petitioner, but the petitioner is not accepting the said amount.

14. I have heard the learned advocates at length. Clause 3 of the policy, which is relevant for the purpose, is reproduced hereinbelow :

"3. If the Proposer (annuitant) shall die before the date on which the annuity vests and while the policy is in force, the following benefits shall become payable :

(i)(a) In case the named spouse is alive on the date of the Proposer (Annuitant), then only Life annuity equal to at least 50% of the annuity (pension) amount specified herein above will be payable to such spouse from 1st of the month following the month of the death of the annuitant (proposer) and every month thereafter during his/her life time with a guarantee period of 15 years.

(b) If the named spouse shall die after the date on which annuity commences on her life but before the guarantee period of 15 years, the annuity payable during the balance guarantee period shal become payable to appointed nominee or failing

him/her to the proposer's proving Executors or Administrators or other legal representatives who should take representation to is/her estate or limited to the moneys payable under the policy from any court of any state or territory of the Union of India.

(ii) If the named spouse is not alive on the date of death of the Proposer (annuitant), proportional Notional Cash Option in lumpsum (in the ratio of premiums paid upto the date of death to the total number of premiums payable) shall become payable to the appointed nominee or failing him/her to the Proposer's proving Executors or Administrators or other legal representatives who should take representation to his/her estate or limited to the moneys payable under this policy from any State or territory of the Union of India."

15. Upon perusal of the said clause, it is very clear that if the spouse of the annuitant is not alive at the time of his or her death, the proportional notional cash Option in lumpsum, in the ratio of premiums paid upto the date of death to the total number of premiums payable, becomes payable to the nominee.

16. In the instant case, it is an admitted fact that when the daughter of the petitoner was insured, she was unmarried and, therefore, name of her spouse had not been stated in the policy though name of her mother was written in the said coloum. Had the annuitant been married at the time of her death, the question with regard to making payment to the spouse would have arisen but in the instant case, as the petitioner was unmarried and as she had nominated her mother to accept the amount payable upon her death, in my opinion, no fault can be found with the respondent corporation when the respondent corporation is offering the amount to the petitioner, which becomes payable to the nominee upon death of the annuitant.

17. The submission of the learned advocate appearing for the petitoner with regard to applicability of sec. 45 of the Insurance Act does not appear to be sound. In my opinion, the said submission is irrelevant because sec. 45 of the Act is not applicable in the instant case at all. There is no question with regard to making any change in the terms of the policy and, therefore, the said submission is not relevant.

18. So far as the argument with regard to promissory estoppel is concerned, in my opinion, no case has been made out for the same and even if a case is made out for promissory estoppel, the petitioner has to take action against the concerned agent and for that purpose she has to approach a different forum because in that event several disputed question of fact might have to be examined

19. Neither this court, nor the respondent corporation, has objected to maintainability of the petition in the instant case and, therefore, the petitioner's reliance upon LIC v. Asha Goel (supra) is also not relevant. The said argument has been recorded only for the reason that the learned advocate for the petitoner has insisted that the court should record the submission pertaining to maintainability of the petition.

20. Looking to the above facts, in my opinion, no legal or fundamental right of the petitioner has been violated by the respondent corporation. The respondent corporation is ready and willing to pay the amount, which has become lawfully payable to the petitioner, but the petitioner is insisting for the amount, which would have been payable to the spouse if there was one. As the petitioner was not the spouse of the annuitant, in my opinion, the petitioner has no right to get the amount payable to the spouse.

21. For the foregoing reasons, in my opinion, there is no substance in the petition and the petition is rejected. Notice is discharged with no order as to costs.

(A.R. Dave, J.)

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